Supreme Court, U.S.
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No. 03-1105

IN THE

Supreme Court of the United States

ROBERT E. BROWN, *et ux.*,

Petitioners,

v.

WALLACE E. TURNER, *et ux.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

BRIGID Q. ALFORD
Counsel of Record
G. EDWARD SCHWEIKERT IV
BOSWELL, TINTNER, PICCOLA & ALFORD
315 North Front Street
Post Office Box 741
Harrisburg, PA 17108
(717) 236-9377

Attorneys for Respondents

186045

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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COUNTER STATEMENT OF THE CASE[1]

Although this Court's resolution of whether to grant the Petitioners' (hereinafter "the Browns") Petition for Writ of Certiorari does not turn solely upon its consideration of factual matters, the Respondents (hereinafter "the Turners") are compelled to present a counter-statement of the case in order to clarify those facts set forth in the Browns' Statement of the Case.

On March 17, 1992, the Turners entered into a real estate sales contract with the Browns for the sale of certain property located at 11837 Oak Lane, Zion, Lake County, Illinois. The property had been originally listed for sale at Three Hundred Thirty Thousand ($330,000.00) dollars. The agreement called for a price of Three Hundred Seventeen Thousand Five Hundred ($317,500.00) dollars. Closing date was set for June 9, 1992. Thereafter, the Browns refused to close on the property. On or about June 20, 1992, the Browns signed a contract and purchased a different house.

On June 24, 1992, the Browns sued the Turners, alleging a refusal to cancel the contract and honor the contingency for the medical license. In response, the Turners filed suit against the Browns on July 1, 1992, alleging breach of contract and requesting specific performance. The two suits were consolidated and trial was held in the Circuit Court of the 19th Judicial Circuit of Illinois in Lake County.

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1. The Turners respectfully submit that the Statement of the Case presented in the Petitioners' Petition for Writ of Certiorari includes much more "argument" than "fact" (e.g., "The Turners were lying in wait . . ." Petition for Writ at 2), and many "facts" not of record (e.g., the facts surrounding the Turners' return to Pennsylvania), all of which should be disregarded by this Honorable Court. *Petition for Writ* at 2.

In a judgment issued August 12, 1993, the trial court in Illinois found that the Browns had waived the contingency clause and had breached the contract. The trial court, however, denied the Turners' request for specific performance and entered a judgment for damages. The Turners appealed.

On November 8, 1994, the Second District Appellate Court of Illinois reversed in part, vacated in part and remanded the case. After finding that the trial court abused its discretion in not awarding specific performance, the Illinois appellate court vacated the award of damages and remanded the case to the trial court. Neither the Turners nor the Browns appealed the decision of the Illinois appellate court.

As a result of the appellate court's order, on April 17, 1995, the Illinois trial court entered a new decision against the Browns, ordering specific performance and setting closing for May 17, 1995. Instead of complying with that order, on June 14, 1995, the Browns filed for bankruptcy protection in the Middle District Court of Pennsylvania, where they were then residing. On August 8, 1995, the Turners filed a Motion for Relief from the Automatic Stay, seeking enforcement of the specific performance order. Subsequently, the Bankruptcy Court entered an Order of February 28, 1997, denying the Motion for Relief from Automatic Stay, but directing sale of the property, and assessment of damages against the Debtors.

The Turners then filed a proof of claim. The Browns objected, contending it was untimely. The Bankruptcy Court overruled their objections and, later, denied reconsideration. On November 25, 1998, the United States District Court for the Middle District of Pennsylvania affirmed the orders entered by the Bankruptcy Court. The Browns appealed to

the Third Circuit Court of Appeals and the Third Circuit dismissed the appeal for lack of jurisdiction and remanded the case back to the Bankruptcy Court for entry of a final order.

Upon remand, the Bankruptcy Court held a hearing and entered an order fixing the Turners' damages at $36,984.44. *Petition for Writ*, App. C, p. 11a. Again, the Browns appealed to the District Court. Again, Judge Jones' October 10, 2002, Order affirmed the Bankruptcy Court's ruling. *Petition for Writ*, App. B, p. 7a. On September 30, 2003, a three-judge panel of the Third Circuit Court of Appeals ruled in the Turners' favor, upholding the decisions of the Bankruptcy Court and the District Court. *Petition for Writ*, App. A, p. 3a. Subsequently, the Browns petitioned to the Third Circuit for a Panel Rehearing. On November 3, 2003, the Third Circuit denied this request. *Petition for Writ*, App. D, p. 22a. The Browns pressed on with the instant Petition for Writ of Certiorari.

REASONS FOR DENYING THE PETITION

A. The Third Circuits' decision in this case did not create a conflict among the Federal Circuit Courts as to what constitutes an informal proof of claim.

Initially, the Browns argue in their Petition for Writ of Certiorari (hereinafter the "Petition") that the Third Circuit, District Court and Bankruptcy Court all held that the Turners had a claim cognizable in bankruptcy. The Browns cite this Court's opinion in *Ohio v. Kovacs*, 469 U.S. 274, 105 S. Ct. 705, 83 L. Ed. 2d 649 (1985) as analogous to this case. In *Kovacs*, this Court ruled on the *existence of a claim* in bankruptcy and whether that claim was dischargeable.

That is not the case here. The Bankruptcy Court ruled long ago that the Turners had a "claim" in the Browns' bankruptcy proceeding. The issue that Petitioners seek this Court to review has been before the bankruptcy court twice, the United States District Court twice and the Third Circuit twice. To wit, did the Turners present a document to the bankruptcy court that is properly classified as an informal proof of claim? The aforementioned lower courts have each (twice) made the same ruling: yes.

The Browns' contention that a conflict was created by the Third Circuit Court of Appeals decision in this case is unique. The Browns cite a multitude of cases in which the circuit courts have ruled on the existence or nonexistence of an informal proof of claim in a bankruptcy proceeding. None of the Browns' cases are directly on point with the case at bar, in which the Turners initially argued that they did not have a "claim" within the Browns bankruptcy proceeding and later used their Motion for Relief from the Automatic Stay as an informal proof of claim. The Browns ignore case law that is on point. A motion for relief from the automatic stay can constitute an informal proof of claim. *See In re Pizza of Hawaii, Inc.*, 761 F.2d 1374 (9th Cir. Hawaii 1985). In some cases, courts have held that action in as casual a form as a letter notifying the Trustee of a debt of the estate may constitute an informal proof of claim, or the constructive filing of a proof of claim. *See In re Anderson-Walker Industries, Inc.*, 798 F.2d 1285 (9th Cir. Cal. 1986); *In re Butterworth*, 50 Bankr. 320 (W.D. Mich. 1984).

As is reflected in the initial pleadings in this case, the Turners had initially sought equitable relief against the Browns, relying upon cases holding that such relief did not constitute a claim, *per se*, against the debtor.

See Roxse Homes, Inc. v. Roxse Homes Ltd. Partnership, 83 B.R. 185-189 (D. Mass.), *aff'd*, 860 F.2d 1072 (1st Cir. Mass. 1988). *See also*, *In re Pribonic*, 70 B.R. 596 (Bankr. W.D. Pa. 1987). The Turners made this argument in good faith, as they were attempting to enforce a specific performance order from an Illinois court. After the bankruptcy court ruled that the Turners did, in fact, have a "claim" in bankruptcy, the Turners filed an amended proof of claim – asserting their Motion for Relief from the Automatic Stay as an informal proof of claim. The Browns challenged this ruling at every level of judicial review. At every level, their challenge failed.

The Browns' reference to the Turners' initial argument, nearly ten (10) years ago, that they did not have a "claim" within the Browns' bankruptcy proceeding is a classic red herring. The bankruptcy court resolved this issue years ago, holding that the Turners did, in fact, have a claim in bankruptcy. The Browns never appealed this ruling. Instead, the Browns appealed the bankruptcy court's ruling that the Turners' Motion for Relief from the Automatic Stay constituted an informal proof of claim.

The seminal standard for determining the existence of an informal proof of claim, and the standard utilized by the Third Circuit in this case, is found in *In re McCoy Management Services, Inc.*, 44 B.R. 215 (Bankr. W.D. Ky. 1984). The test involves a review of the following: (1) the proof of claim must be in writing; (2) the writing must contain a demand by the creditor on the debtor's estate; (3) the writing must express an intent to hold the debtor liable for the debt; (4) the proof of claim must be filed with the Bankruptcy Court; and (5) based on the facts of the case, it would be equitable to allow the amendment.

McCoy Management, *supra*, at 217. The touchstone of the *McCoy* factors is that this is a *factual inquiry* – an inquiry that is left to the discretion of the individual judge making a ruling. The Browns attempt to characterize each lower courts' ruling using this standard as creating a conflict among the circuit courts. Therefore, the Browns reason, this Court should endeavor to set forth the "law of the land" with regard to informal proofs of claim.

What the Browns ignore is that there can be no hard and fast rule when a factual inquiry is involved. It is well-settled that the law recognizes informal proofs of claim. It is equally clear that evaluations of actions proffered as informal proofs must include *ad hoc* reviews of the particular actions in questions. It is simple logic, then, to see that such *ad hoc* evaluations do not – and cannot – allow for the one-size-fits-all definition that the Browns are implicitly promoting. There is no "conflict" among the circuit courts on this issue. There are only different resolutions of the "informal proof of claim" issue, arising from a host of different and distinctive factual underpinnings. Each lower court that heard this case determined, properly, that the Turners did, in fact, present an informal proof of claim within their Motion for Relief from Automatic Stay. Similarly, each court cited in the Browns' Petition, as well as those set forth above, analyzed the facts of the individual case and made a determination.

The Browns note in their Petition that this Court should agree to hear this case to resolve the following conflict:

> [i]f a creditor is able to deny in multiple documents the notion that it has a claim, what *does* constitute, as a matter of law, a creditor's intent to hold the bankruptcy estate liable?

Petition for Writ at 8. The answer is simple: apply the *In re McCoy* factors to the facts of the case in question. This is not a conflict of laws issue among the circuits. This is a case in which courts reviewed the facts of *this* case and *each* ruled that the Turners had, in fact, presented an informal proof of claim, allowable under the bankruptcy laws.

After reviewing the relevant facts and pleadings it had to consider, the Third Circuit ruled that the Turners had, in fact, presented an informal proof of claim (affirming the Bankruptcy Court and the United States District Court for the Middle District of Pennsylvania). *Petition for Writ*, App. A, p. 5a. This ruling does not, as the Browns argue, create a conflict of law issue amongst the Circuit Courts. In fact, it follows the analyses utilized by the Circuit Courts. Here, factually, the Turners did present an informal proof of claim. Analyzing a different set of facts, the Third Circuit – as well as the bankruptcy court and the district court, for that matter – could have ruled that the Turners did not present an informal proof of claim.

B. The Third Circuit's failure to set forth a standard of review does not create a conflict that warrants review by this Court.

The Browns assert that the Third Circuit did not articulate its standard of review in its opinion. A simple review of the Third Circuit's opinion makes clear the standard it applied in this case:

> [I] will not take the time to recite the facts and procedural history – the tortuous facts and long procedural history of this unfortunate case, which deserves at this late date to be disposed of quickly.

> The panel is satisfied that no valid purpose would be served to taking this matter under advisement and writing a lengthy opinion. We are satisfied that the motion for relief from automatic stay . . . does meet the *McCoy* requirements. . . .

Petition for Writ, at Appendix A, 5a. Clearly, the Third Circuit panel exercised the exact plenary review of this case that the Browns had requested in their Brief to the Circuit Court. *Brief for Appellants to the Third Circuit Court of Appeals*, at 7. The Browns' argument that it is unclear what standard of review the Third Circuit used is tenuous, at best, and specious, at worst.

Finally, under the auspices of a conflict among the circuits as to the appropriate standard of review, the Browns also argue that some circuits apply the *abuse of discretion* standard to matters of this type, while other circuits apply plenary review. The Browns' assertion that this creates a conflict appropriate for this Court's review is misplaced. In a case such as this, where the Third Circuit was asked to determine whether the Turners' filed an informal proof of claim, it is irrelevant which standard of review the Court applied. The results are the same. If the Court applied plenary review, it must review the facts as applied to the law, *de novo*. Utilizing an abuse of discretion standard, the Third Circuit must enter into the same inquiry – did the lower courts apply the facts correctly to the law? Either way, the Third Circuit makes the same inquiry: Is there sufficient evidence that, here, the Turners presented an informal proof of claim to the bankruptcy court?

This is not a matter properly before this Court. This is simply a case of the Petitioners' continued efforts to postpone

the inevitable: their compliance with a court order to pay the Turners money. This Court should not permit the Browns to twist and manipulate the facts of this case into a matter for its consideration.

CONCLUSION

For the foregoing reasons, the Respondents, Wallace E. Turner and Joann M. Turner, respectfully request that this Court deny the Browns' Petition for Writ of Certiorari.

Respectfully submitted,

BRIGID Q. ALFORD
Counsel of Record
G. EDWARD SCHWEIKERT IV
BOSWELL, TINTNER, PICCOLA
& ALFORD
315 North Front Street
Post Office Box 741
Harrisburg, PA 17108
(717) 236-9377

Attorneys for Respondents